

1 **POSTSECONDARY SCHOOL STATE AUTHORIZATION**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: James A. Dunnigan**

5 Senate Sponsor: Curtis S. Bramble

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts the Utah Postsecondary School State Authorization Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ provides that a postsecondary school may obtain state authorization for purposes of
- 14 34 C.F.R. Sec. 600.9 by obtaining a certificate of postsecondary state authorization;
- 15 ▶ allows the Division of Consumer Protection to:
 - 16 • enter into an interstate reciprocity agreement; and
 - 17 • make rules consistent with the provisions of this bill;
- 18 ▶ authorizes the State Board of Regents to make rules to implement an interstate
- 19 reciprocity agreement if the agreement includes institutions that are part of the state
- 20 system of higher education under Section [53B-1-102](#);
- 21 ▶ establishes qualifications for and a procedure by which a postsecondary school may
- 22 obtain a certificate of postsecondary state authorization from the Division of
- 23 Consumer Protection;
- 24 ▶ provides that, under certain circumstances, the Division of Consumer Protection
- 25 may deny, suspend, or revoke a certificate of postsecondary state authorization;
- 26 ▶ provides procedures to enforce compliance with the provisions of this bill; and
- 27 ▶ makes technical and conforming changes.

28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **13-2-1**, as last amended by Laws of Utah 2012, Chapter 375

35 **13-34-103**, as last amended by Laws of Utah 2011, Chapter 221

36 **13-34-105**, as last amended by Laws of Utah 2013, Chapter 124

37 **13-34-106**, as last amended by Laws of Utah 2011, Chapter 221

38 **13-34-110**, as last amended by Laws of Utah 2011, Chapter 221

39 **13-34-113**, as last amended by Laws of Utah 2011, Chapter 221

40 ENACTS:

41 **13-34a-101**, Utah Code Annotated 1953

42 **13-34a-102**, Utah Code Annotated 1953

43 **13-34a-103**, Utah Code Annotated 1953

44 **13-34a-104**, Utah Code Annotated 1953

45 **13-34a-201**, Utah Code Annotated 1953

46 **13-34a-202**, Utah Code Annotated 1953

47 **13-34a-203**, Utah Code Annotated 1953

48 **13-34a-204**, Utah Code Annotated 1953

49 **13-34a-205**, Utah Code Annotated 1953

50 **13-34a-206**, Utah Code Annotated 1953

51 **13-34a-207**, Utah Code Annotated 1953

52 **13-34a-301**, Utah Code Annotated 1953

53 **13-34a-302**, Utah Code Annotated 1953

54 **13-34a-303**, Utah Code Annotated 1953

55 **13-34a-304**, Utah Code Annotated 1953

56 **13-34a-305**, Utah Code Annotated 1953

57 **13-34a-306**, Utah Code Annotated 1953

58 REPEALS:

59 **13-34-107.5**, as enacted by Laws of Utah 2011, Chapter 221

60 **13-34-107.6**, as enacted by Laws of Utah 2011, Chapter 221

61

62 *Be it enacted by the Legislature of the state of Utah:*

63 Section 1. Section **13-2-1** is amended to read:

64 **13-2-1. Consumer protection division established -- Functions.**

65 (1) There is established within the Department of Commerce the Division of Consumer
66 Protection.

67 (2) The division shall administer and enforce the following:

68 (a) Chapter 5, Unfair Practices Act;

69 (b) Chapter 10a, Music Licensing Practices Act;

70 (c) Chapter 11, Utah Consumer Sales Practices Act;

71 (d) Chapter 15, Business Opportunity Disclosure Act;

72 (e) Chapter 20, New Motor Vehicle Warranties Act;

73 (f) Chapter 21, Credit Services Organizations Act;

74 (g) Chapter 22, Charitable Solicitations Act;

75 (h) Chapter 23, Health Spa Services Protection Act;

76 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;

77 (j) Chapter 26, Telephone Fraud Prevention Act;

78 (k) Chapter 28, Prize Notices Regulation Act;

79 (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

80 (m) Chapter 34, Utah Postsecondary Proprietary School Act;

81 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;

82 [~~(n)~~] (o) Chapter 41, Price Controls During Emergencies Act;

83 [~~(o)~~] (p) Chapter 42, Uniform Debt-Management Services Act; and

84 [~~(p)~~] (q) Chapter 49, Immigration Consultants Registration Act.

85 Section 2. Section **13-34-103** is amended to read:

86 **13-34-103. Definitions.**

87 As used in this chapter:

88 (1) "Agent" means any person who:

89 (a) owns an interest in or is employed by a proprietary school [~~and who~~]; and90 [~~(a)~~] (b) (i) enrolls or attempts to enroll a resident of this state in a proprietary school;91 [~~(b)~~] (ii) offers to award educational credentials for remuneration on behalf of a

92 proprietary school; or

93 [~~(c)~~] (iii) holds himself out to residents of this state as representing a proprietary school

94 for any purpose.

95 (2) (a) "Certificate of registration" means approval [~~of~~] from the division to operate a
96 school or institution in compliance with this chapter and rules adopted under this chapter. [~~The~~
97 ~~registration is not~~]98 (b) "Certificate of registration" does not mean an endorsement of the school or
99 institution by either the division or the state.

100 (3) "Division" means the Division of Consumer Protection.

101 (4) "Educational credentials" means degrees, diplomas, certificates, transcripts, reports,
102 documents, or letters of designation, marks, appellations, series of letters, numbers, or words
103 which signify or appear to signify enrollment, attendance, progress, or satisfactory completion
104 of the requirements or prerequisites for any educational program.105 (5) "Institution" means an individual, corporation, partnership, association,
106 cooperative, or other legal entity.107 (6) "Offer" means to advertise, publicize, solicit, or encourage any person directly or
108 indirectly.

109 (7) "Operate" in this state means to:

110 (a) maintain a place of business in the state;

111 (b) solicit business in the state;

112 (c) conduct significant educational activities within the state; or

113 (d) offer or provide postsecondary instruction leading to a postsecondary degree or

114 certificate to any number of Utah residents from a location outside the state by correspondence
115 or any telecommunications or electronic media technology.

116 (8) "Ownership" means:

117 (a) the controlling interest in a school, institution, or college~~[-ff]; or~~

118 (b) if an entity holds the controlling interest in the school, institution, or college [is
119 ~~owned or controlled by other than a natural person, "ownership" refers to]~~, the controlling
120 interest in the ~~[legal]~~ entity ~~[which controls]~~ that holds the controlling interest in the school,
121 institution, or college.

122 (9) "Postsecondary education" means education or educational services offered
123 primarily to ~~[persons]~~ individuals who:

124 (a) have completed or terminated their secondary or high school education; or ~~[who]~~

125 (b) are beyond the age of compulsory school attendance.

126 (10) (a) "Proprietary school" means ~~[any]~~ a private institution, including a business,
127 modeling, paramedical, tax preparation, or trade or technical school, ~~[other than a school~~
128 ~~exempted under this chapter,]~~ that offers postsecondary education:

129 ~~[(a)]~~ (i) in consideration of the payment of tuition or fees; and

130 ~~[(b)]~~ (ii) for the attainment of educational, professional, or vocational objectives.

131 ~~[(11) "Rules" means those rules adopted by the division under the Utah Administrative~~
132 ~~Rulemaking Act necessary to enforce and administer this chapter.]~~

133 (b) "Proprietary school" does not include an institution that is exempt from this chapter
134 under Section [13-34-105](#).

135 ~~[(12)]~~ (11) "Utah institution" means a ~~[postsecondary educational]~~ school or institution
136 ~~[whose headquarters or primary operations are in Utah.]~~ that:

137 (a) offers postsecondary education; and

138 (b) is headquartered or primarily operates in Utah.

139 Section 3. Section **13-34-105** is amended to read:

140 **13-34-105. Exempted institutions.**

141 (1) This chapter does not apply to:

142 (a) a Utah institution directly supported, to a substantial degree, with funds provided
143 by:

144 (i) the state;

145 (ii) a local school district; or

146 (iii) other Utah governmental subdivision;

147 (b) an institution that offers instruction exclusively at or below the 12th grade level;

148 (c) a lawful enterprise that offers only professional review programs, [~~such as~~]

149 including C.P.A. and bar examination review and preparation courses;

150 (d) a private~~[-, postsecondary educational]~~ institution that:

151 (i) provides postsecondary education; and

152 (ii) is owned, controlled, operated, or maintained by a bona fide church or religious
153 denomination, [~~which~~] that is exempted from property taxation under the laws of this state;

154 (e) [~~subject to Subsection (3) and Section 13-34-107.5;~~] a school or institution that is
155 accredited by a regional or national accrediting agency recognized by the United States

156 Department of Education;

157 (f) subject to Subsection (4), a business organization, trade or professional association,
158 fraternal society, or labor union that:

159 (i) sponsors or conducts courses of instruction or study predominantly for bona fide
160 employees or members; and

161 (ii) does not~~[-, in advertising, describe itself]~~ advertise as a school;

162 (g) an institution that:

163 (i) (A) exclusively offers general education courses or instruction [~~society~~] that are
164 remedial, avocational, nonvocational, or recreational in nature; and

165 (B) does not advertise occupation objectives or grant educational credentials; or

166 (ii) exclusively prepares individuals to teach courses or instruction described in

167 Subsection (1)(g)(i)(A);

168 (h) an institution that offers only workshops or seminars:

169 (i) lasting no longer than three calendar days; and

- 170 (ii) for which academic credit is not awarded;
- 171 (i) an institution that offers programs:
 - 172 (i) in barbering, cosmetology, real estate, or insurance; and
 - 173 (ii) that are regulated and approved by a state or federal governmental agency;
 - 174 (j) an education provider certified by the Division of Real Estate under Section
 - 175 61-2c-204.1;
 - 176 (k) an institution that offers aviation training if the institution:
 - 177 (i) (A) is approved under Federal Aviation Regulations, 14 C.F.R. Part 141; or
 - 178 (B) provides aviation training under Federal Aviation Regulations, 14 C.F.R. Part 61;
 - 179 and
 - 180 (ii) exclusively offers aviation training that a student fully receives within 24 hours
 - 181 after the student pays any tuition, fee, or other charge for the aviation training;
 - 182 (l) an institution that provides emergency medical services training if all of the
 - 183 institution's instructors, course coordinators, and courses are approved by the Department of
 - 184 Health; and
 - 185 (m) an institution that exclusively conducts nurse aide training programs that are
 - 186 approved by the State Office of Vocational Education and are subject to the Nurse Aide
 - 187 Registry[; ~~and~~].
 - 188 [~~(n) a private, nonprofit educational institution that has been in continuous operation as~~
 - 189 ~~a private, nonprofit educational institution for at least 20 years, except as provided in~~
 - 190 ~~Subsection (5), Subsection 13-34-106(8) and Section 13-34-107.6.]~~
 - 191 (2) If available evidence suggests that an exempt institution under this section is not in
 - 192 compliance with the standards of registration under this chapter and applicable division rules,
 - 193 the division shall contact the institution and, if appropriate, the state or federal government
 - 194 agency to request corrective action.
 - 195 (3) An institution, branch, extension, or facility operating within the state that is
 - 196 affiliated with an institution operating in another state shall be separately approved by the
 - 197 affiliate's regional or national accrediting agency to qualify for the exemption described in

198 Subsection (1)(e).

199 (4) For purposes of Subsection (1)(f), a business organization, trade or professional
200 association, fraternal society, or labor union is considered to be conducting the course
201 predominantly for bona fide employees or members if it hires a majority of the persons who:

202 (a) successfully complete its course of instruction or study with a reasonable degree of
203 proficiency; and

204 (b) apply for employment with that same entity.

205 ~~[(5) An institution subject to, or expressly exempted from any part of, this chapter is:]~~

206 ~~[(a) established as an educational institution within the state;]~~

207 ~~[(b) independent of the state system of higher education;]~~

208 ~~[(c) subject to compliance with the applicable provisions of this chapter; and]~~

209 ~~[(d) authorized to operate educational programs beyond secondary education, including
210 programs leading to a degree or certificate.]~~

211 Section 4. Section **13-34-106** is amended to read:

212 **13-34-106. Responsibilities of division.**

213 The division ~~[is responsible for the administration of this chapter, and]~~ shall ~~[do the~~
214 ~~following]:~~

215 (1) prescribe the contents of the registration statements required by this chapter relating
216 to the quality of education and ethical and business practices;

217 ~~[(2) issue:]~~

218 ~~[(a) certification of registration upon receipt and approval of the registration statement
219 required under Section [13-34-107](#); and]~~

220 ~~[(b) a certificate of exemption under Section [13-34-107.5](#) upon receipt and approval of
221 an application and verification that the requirements of Subsection [13-34-105\(1\)\(c\)](#) and Section
222 [13-34-107.5](#) are met;]~~

223 (2) upon receipt and approval of a registration statement under Section [13-34-107](#),
224 issue a certification of registration;

225 (3) receive, investigate, and make available for public inspection ~~[the]~~ a registration

226 ~~[statements]~~ statement filed by a proprietary ~~[schools]~~ school operating or intending to operate
 227 in the state;

228 (4) maintain and publicize a list of proprietary schools for which a registration
 229 statement is on file with the division;

230 (5) on the division's own initiative or in response to a complaint filed with the division,
 231 do any of the following with respect to ~~[any]~~ an institution subject to, or reasonably believed by
 232 the division to be subject to, this chapter:

233 (a) investigate;

234 (b) audit;

235 (c) review;

236 (d) appropriately act, including enforcing this chapter or any other law enforced by the
 237 division; ~~[and]~~ or

238 (e) refer a matter to ~~[-(i)]~~ another governmental entity; ~~[or]~~

239 ~~[(ii) the institution's accrediting body, if the institution is an exempt institution under~~
 240 ~~Section 13-34-107.5;]~~

241 (6) negotiate and enter into an interstate reciprocity ~~[agreements]~~ agreement with ~~[other~~
 242 ~~states]~~ another state, if in the judgment of the division, the ~~[agreements are or will help to]~~
 243 agreement helps effectuate the purposes of this chapter;

244 (7) consent to the use of ~~[educational terms in business names]~~ an educational term in a
 245 business name in accordance with Section 13-34-114; and

246 (8) establish and maintain a process for reviewing and appropriately acting on
 247 complaints concerning ~~[postsecondary educational]~~ institutions ~~[operating]~~ that provide
 248 postsecondary education and operate in the state, including enforcing applicable state laws.

249 Section 5. Section 13-34-110 is amended to read:

250 **13-34-110. Enforcement of contracts or agreements -- Rescission based on**
 251 **defective registration statement.**

252 (1) A proprietary school ~~[shall be unable to]~~ may not enforce in the courts of this state
 253 ~~[any]~~ a contract or agreement relating to postsecondary education services in this state unless,

254 at the time the contract or agreement was [~~entered into~~] executed, an effective registration
 255 statement was on file with the division and made accessible to every applicant at the time of
 256 admission to the school.

257 (2) It is a violation of this chapter if a proprietary school or [~~its~~] the proprietary school's
 258 agent:

259 (a) fails to file an effective registration statement;

260 (b) willfully omits from a registration statement provided under Section 13-34-107 [~~or~~
 261 ~~an application under Section 13-34-107.5 for an exemption certificate any~~] a material statement
 262 of fact required by this chapter [~~and~~] or applicable regulations; or

263 (c) includes in a registration statement any material statement of fact that [~~was known,~~
 264 ~~or should have been known, to~~] the proprietary school knew or should have known to be false,
 265 deceptive, inaccurate, or misleading.

266 (3) A student who enrolled in a proprietary school, in reliance upon the school's
 267 registration statement, may rescind the contract or agreement of enrollment and obtain a refund
 268 from the school of all tuition, fees, and other charges paid to the school if the school or its
 269 agent committed a violation under Subsection (2).

270 (4) A violation of this chapter is also a violation of Section 13-11-4.

271 Section 6. Section 13-34-113 is amended to read:

272 **13-34-113. Denial, suspension, or revocation of a certificate of registration --**
 273 **Limitations.**

274 (1) In accordance with Chapter 2, Division of Consumer Protection, and Title 63G,
 275 Chapter 4, Administrative Procedures Act, the division may initiate proceedings to deny,
 276 suspend, or revoke a certificate of registration to operate a proprietary school under this chapter
 277 [~~or an exemption certificate under Section 13-34-107.5~~] if:

278 (a) the division finds that the order is in the public interest; and

279 (b) (i) the registration statement[;] or renewal statement[;] ~~or application for an~~
 280 ~~exemption certificate~~] is incomplete, false, or misleading in any respect;

281 (ii) the division determines that the educational credential associated with the

282 proprietary school [~~or accredited institution~~] represents the undertaking or completion of
283 educational achievement that has not been undertaken and earned; or

284 (iii) the proprietary school [~~, accredited institution,~~] or an individual described in

285 Subsection 13-34-107(2)(a)(ii)(B) has:

286 (A) violated any provision of:

287 (I) this chapter;

288 (II) the rules made by the division pursuant to this chapter; or

289 (III) a commitment made in a registration statement for a certificate of registration to
290 operate the proprietary school [~~or in an application for an exemption certificate~~];

291 (B) caused or allowed to occur a violation of any provision of:

292 (I) this chapter;

293 (II) the rules made by the division pursuant to this chapter; or

294 (III) a commitment made in a registration statement for a certificate of registration to
295 operate the proprietary school;

296 (C) been enjoined by any court, or is the subject of an administrative or judicial order
297 issued in this or another state, if the injunction or order:

298 (I) includes a finding or admission of fraud, breach of fiduciary duty, or material
299 misrepresentation; or

300 (II) was based on a finding of lack of integrity, truthfulness, or mental competence;

301 (D) been convicted of a crime involving moral turpitude;

302 (E) obtained or attempted to obtain a certificate of registration under this chapter by
303 misrepresentation;

304 (F) failed to timely file with the division any report required by:

305 (I) this chapter; or

306 (II) rules made by the division pursuant to this chapter;

307 (G) failed to furnish information requested by the division; or

308 (H) failed to pay an administrative fine imposed by the division in accordance with this
309 chapter.

310 (2) Division staff may place reasonable limits upon a proprietary school's continued
311 certificate of registration to operate if:

312 (a) there are serious concerns about the proprietary school's ability to provide the
313 training in the manner approved by the division; and

314 (b) limitation is warranted to protect the students' interests.

315 [~~(3) (a) The division may:~~]

316 [~~(i) conduct a criminal background check on an individual described in Subsection~~
317 ~~13-34-107(2)(a)(ii)(B); and]~~

318 [~~(ii) require a proprietary school to provide to the division any information and to cover~~
319 ~~any costs necessary to conduct a criminal background check on an individual described in~~
320 ~~Subsection 13-34-107(2)(a)(ii)(B)(I) through (IV), including:]~~

321 [~~(A) a fingerprint card in a form acceptable to the division;]~~

322 [~~(B) consent to a criminal background check by the Utah Bureau of Criminal~~
323 ~~Identification and the Federal Bureau of Investigation;]~~

324 [~~(C) the cost of a criminal background check; and]~~

325 [~~(D) the cost of fingerprinting.]~~

326 [~~(b) Money paid to the division for the cost of a criminal background check is~~
327 ~~nonlapsing.]~~

328 (3) (a) The division may require an individual described in Subsection
329 13-34-107(2)(a)(ii)(B) to:

330 (i) submit a fingerprint card in a form acceptable to the division; and

331 (ii) consent to a criminal background check by:

332 (A) the Federal Bureau of Investigation;

333 (B) the Utah Bureau of Criminal Identification; or

334 (C) another agency of any state that performs criminal background checks.

335 (b) The proprietary school or the individual who is subject to the background check
336 shall pay the cost of:

337 (i) the fingerprint card described in Subsection (3)(a)(i); and

338 (ii) the criminal background check.

339 Section 7. Section **13-34a-101** is enacted to read:

340 **CHAPTER 34a. UTAH POSTSECONDARY SCHOOL**

341 **STATE AUTHORIZATION ACT**

342 **Part 1. General Provisions**

343 **13-34a-101. Title.**

344 (1) This chapter is known as "Utah Postsecondary School State Authorization Act."

345 (2) This part is known as "General Provisions."

346 Section 8. Section **13-34a-102** is enacted to read:

347 **13-34a-102. Definitions.**

348 As used in this chapter:

349 (1) "Accredited institution" means a postsecondary school that is accredited by an
350 accrediting agency.

351 (2) "Accrediting agency" means a regional or national private educational association
352 that:

353 (a) is recognized by the United States Department of Education;

354 (b) develops evaluation criteria; and

355 (c) conducts peer evaluations to assess whether a postsecondary school meets the
356 criteria described in Subsection (2)(b).

357 (3) "Agent" means a person who:

358 (a) (i) owns an interest in a postsecondary school; or

359 (ii) is employed by a postsecondary school; and

360 (b) (i) enrolls or attempts to enroll a Utah resident in a postsecondary school;
361 (ii) offers to award an educational credential for remuneration on behalf of a
362 postsecondary school; or

363 (iii) holds oneself out to Utah residents as representing a postsecondary school for any
364 purpose.

365 (4) "Certificate of postsecondary state authorization" means a certificate issued by the

366 division to a postsecondary school in accordance with the provisions of this chapter.

367 (5) "Division" means the Division of Consumer Protection.

368 (6) "Educational credential" means a degree, diploma, certificate, transcript, report,
369 document, letter of designation, mark, or series of letters, numbers, or words that represent
370 enrollment, attendance, or satisfactory completion of the requirements or prerequisites of an
371 educational program.

372 (7) "Intentional violation" means a violation of a provision of this chapter that occurs
373 or continues after the division, the attorney general, a county attorney, or a district attorney
374 gives the violator written notice, delivered by certified mail, that the violator is or has been in
375 violation of the provision.

376 (8) "Operate" means to:

377 (a) maintain a place of business in the state;

378 (b) conduct significant educational activities within the state; or

379 (c) provide postsecondary education to a Utah resident that:

380 (i) is intended to lead to a postsecondary degree or certificate; and

381 (ii) is provided from a location outside the state by correspondence or
382 telecommunications or electronic media technology.

383 (9) "Operating history" means a report, written evaluation, publication, or other
384 documentation regarding:

385 (a) the current accreditation status of a postsecondary school with an accrediting
386 agency; and

387 (b) an action taken by an accrediting agency that:

388 (i) places a postsecondary school on probation;

389 (ii) imposes disciplinary action against a postsecondary school; or

390 (iii) requires a postsecondary school to take corrective action.

391 (10) "Ownership" means:

392 (a) the controlling interest in a postsecondary school; or

393 (b) if an entity holds the controlling interest in the postsecondary school, the

394 controlling interest in the entity that holds the controlling interest in the postsecondary school.

395 (11) "Postsecondary education" means education or educational services offered
396 primarily to individuals who:

397 (a) have completed or terminated their secondary or high school education; or

398 (b) are beyond the age of compulsory school attendance.

399 (12) (a) "Postsecondary school" means a person that provides or offers educational
400 services to individuals who:

401 (i) have completed or terminated secondary or high school education; or

402 (ii) are beyond the age of compulsory school attendance.

403 (b) "Postsecondary school" does not include an institution that is part of the state
404 system of higher education under Section [53B-1-102](#).

405 (13) "Private postsecondary school" means a postsecondary school that is not a public
406 postsecondary school.

407 (14) "Public postsecondary school" means a postsecondary school:

408 (a) established by a state or other governmental entity; and

409 (b) substantially supported with government funds.

410 Section 9. Section **13-34a-103** is enacted to read:

411 **13-34a-103. Duties of the division.**

412 (1) The division shall administer and enforce the provisions of this chapter.

413 (2) In administering this chapter, the division shall:

414 (a) receive and review completed registration forms in accordance with the provisions
415 of this chapter;

416 (b) develop, maintain, and make available to the public a list of postsecondary schools
417 that have a current, valid certificate of postsecondary state authorization;

418 (c) adopt a fee schedule in accordance with Section [63J-1-504](#) to cover the cost of
419 processing a registration form and issuing a certificate of postsecondary state authorization; and

420 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
421 consistent with this chapter, make rules governing:

- 422 (i) the content and form of a registration form;
423 (ii) the filing and review procedures relating to a registration form submitted under this
424 chapter;
425 (iii) the filing and review of complaints filed with the division under this chapter;
426 (iv) the denial, suspension, or revocation of a certificate of postsecondary school state
427 authorization; and
428 (v) enforcement of the provisions of this chapter.

429 Section 10. Section **13-34a-104** is enacted to read:

430 **13-34a-104. Authority to execute interstate reciprocity agreement -- Rulemaking.**

431 (1) The division may execute an interstate reciprocity agreement that:

432 (a) is for purposes of state authorization under 34 C.F.R. Sec. 600.9; and

433 (b) is for the benefit of:

434 (i) postsecondary schools in the state; or

435 (ii) (A) postsecondary schools in the state; and

436 (B) institutions that are part of the state system of higher education under Section

437 [53B-1-102.](#)

438 (2) If the division executes an interstate reciprocity agreement described in Subsection

439 (1):

440 (a) except as provided by division rule, the provisions of this chapter do not apply to a
441 postsecondary school that obtains state authorization under the reciprocity agreement; and

442 (b) the division may, in accordance with Title 63G, Chapter 3, Utah Administrative
443 Rulemaking Act, make rules relating to:

444 (i) the standards for granting a postsecondary school state authorization under a
445 reciprocity agreement;

446 (ii) any filing, document, or fee required for a postsecondary school to obtain
447 authorization under a reciprocity agreement; and

448 (iii) penalties if a postsecondary school fails to comply with the rules that the division
449 makes under this Subsection (2).

450 (3) If the division executes an interstate reciprocity agreement described in Subsection
451 (1) that includes institutions that are part of the state system of higher education under Section
452 53B-1-102, the State Board of Regents may make rules that:

- 453 (a) implement the reciprocity agreement; and
- 454 (b) relate to institutions that are part of the state system of higher education under
455 Section 53B-1-102.

456 Section 11. Section 13-34a-201 is enacted to read:

457 **Part 2. State Authorization Procedures**

458 **13-34a-201. Title.**

459 This part is known as "State Authorization Procedures."

460 Section 12. Section 13-34a-202 is enacted to read:

461 **13-34a-202. State authorization -- Certificate of postsecondary state**
462 **authorization.**

463 (1) A postsecondary school that operates in the state obtains state authorization for
464 purposes of 34 C.F.R. Sec. 600.9 if the postsecondary school obtains a certificate of
465 postsecondary state authorization under this chapter.

466 (2) A postsecondary school may obtain state authorization in a manner different from
467 the manner described in Subsection (1) if the alternative manner is accepted by the United
468 States Department of Education.

469 (3) (a) A certificate of postsecondary state authorization is not an endorsement or
470 approval of a postsecondary school by the division or the state.

471 (b) A postsecondary school may not represent that a certificate of postsecondary state
472 authorization is an endorsement or approval by the division or the state.

473 Section 13. Section 13-34a-203 is enacted to read:

474 **13-34a-203. Nonprofit postsecondary school -- Procedure to obtain certificate of**
475 **postsecondary state authorization.**

476 (1) The division shall, in accordance with the provisions of this section, issue a
477 certificate of postsecondary state authorization to a postsecondary school that:

478 (a) is a nonprofit postsecondary school; and
479 (b) has operated as a nonprofit for at least 20 years.
480 (2) To obtain a certificate of postsecondary state authorization under this section, a
481 postsecondary school shall:
482 (a) submit a completed registration form to the division that:
483 (i) for a nonprofit, private postsecondary school, includes:
484 (A) a copy of the private postsecondary school's articles of incorporation;
485 (B) documentation from the United States Internal Revenue Service that demonstrates
486 that the private postsecondary school has nonprofit status, and that the private postsecondary
487 school has had nonprofit status for at least 20 consecutive years from the day on which the
488 private postsecondary school submits the completed registration form; and
489 (C) satisfactory documentation that the private postsecondary school has complied with
490 the complaint process requirements described in Section [13-34a-206](#); or
491 (ii) for a nonprofit, public postsecondary school, includes:
492 (A) documentation sufficient to demonstrate that the public postsecondary school has
493 operated as a nonprofit for at least 20 consecutive years from the day on which the public
494 postsecondary school submits the completed registration form; and
495 (B) satisfactory documentation that the public postsecondary school has complied with
496 the complaint process requirements described in Section [13-34a-206](#); and
497 (b) pay a nonrefundable fee, established by the division, in accordance with Subsection
498 [13-34a-103](#)(2)(c) to pay for the cost of processing the registration form and issuing the
499 certificate of postsecondary state authorization.
500 (3) The division shall develop and make available to the public:
501 (a) a registration form for nonprofit, private postsecondary schools, as described in
502 Subsection (2)(a)(i); and
503 (b) a registration form for nonprofit, public postsecondary schools, as described in
504 Subsection (2)(a)(ii).
505 (4) The division shall deposit money that the division receives under Subsection (2)(b)

506 into the Commerce Service Account, created in Section 13-1-2.

507 (5) If there is a change in circumstance that may affect a postsecondary school's status
508 under this section, the postsecondary school shall notify the division in writing of the change
509 within 30 days after the day on which the change occurs.

510 (6) A certificate of postsecondary state authorization issued under this section:

511 (a) establishes a postsecondary school by name as an educational institution, as
512 described in 34 C.F.R. Sec. 600.9(a)(1)(i);

513 (b) makes a postsecondary school independent of the state system of higher education;
514 and

515 (c) authorizes a postsecondary school to operate educational programs in the state that
516 are beyond secondary education, including programs that lead to a degree or certificate.

517 Section 14. Section **13-34a-204** is enacted to read:

518 **13-34a-204. Postsecondary school -- Procedure to obtain certificate of**
519 **postsecondary state authorization.**

520 (1) The division shall, in accordance with the provisions of this section, issue a
521 certificate of postsecondary state authorization to a postsecondary school.

522 (2) To obtain a certificate of postsecondary state authorization under this section, a
523 postsecondary school shall:

524 (a) submit a completed registration form to the division that includes:

525 (i) proof of current accreditation from the postsecondary school's accrediting agency;

526 (ii) proof that the postsecondary school is fiscally responsible and can reasonably fulfill
527 the postsecondary school's financial obligations, including:

528 (A) a copy of an audit of the postsecondary school's financial statements, with all
529 applicable footnotes, including a balance sheet, an income statement, a statement of retained
530 earnings, and a statement of cash flow, that was performed by a certified public accountant;

531 (B) at the postsecondary school's election, a copy of an audit of the postsecondary
532 school's parent company's financial statements, with all applicable footnotes, including a
533 balance sheet, an income statement, a statement of retained earnings, and a statement of cash

534 flow, that was performed by a certified public accountant; and

535 (C) a copy of all other financial documentation that the postsecondary school provided
536 to the postsecondary school's accrediting agency since the postsecondary school's last
537 registration with the division under this chapter or within the 12 months before the day on
538 which the postsecondary school submits a completed registration form under this section,
539 whichever is longer;

540 (iii) proof of good standing in the state where the postsecondary school is organized;

541 (iv) the postsecondary school's operating history with the postsecondary school's
542 accrediting agency since the postsecondary school's last registration with the division under this
543 chapter or within the 12 months before the day on which the postsecondary school submits a
544 completed registration form under this section, whichever is longer;

545 (v) the number of Utah residents who enrolled in the postsecondary school since the
546 postsecondary school's last registration with the division under this chapter or within the 12
547 months before the day on which the postsecondary school submits a completed registration
548 form under this section, whichever is longer;

549 (vi) satisfactory documentation that the postsecondary school has complied with the
550 complaint process requirements described in Section [13-34a-206](#);

551 (vii) (A) the number of complaints that a Utah resident has filed against the
552 postsecondary school since the postsecondary school's last registration with the division under
553 this chapter or within the 12 months before the day on which the postsecondary school submits
554 a completed registration form under this section, whichever is longer; and

555 (B) upon request, includes copies of the complaints described in Subsection

556 (2)(a)(vii)(A);

557 (viii) a disclosure that states whether the postsecondary school or an owner, officer,
558 director, or administrator of the postsecondary school has been:

559 (A) convicted of a crime;

560 (B) subject to an order issued by a court; or

561 (C) subject to an order issued by an administrative agency that imposed disciplinary

562 action; and

563 (ix) a notarized personal verification by the owner or a responsible officer of the
564 postsecondary school that the information provided under this Subsection (2)(a) is complete
565 and accurate; and

566 (b) pay a nonrefundable fee, established by the division, in accordance with Subsection
567 13-34a-103(2)(c) to pay for the cost of processing the registration form and issuing the
568 certificate of postsecondary state authorization.

569 (3) The division shall develop and make available to the public a registration form
570 described in Subsection (2)(a).

571 (4) The division shall deposit money that the division receives under Subsection (2)(b)
572 into the Commerce Service Account, created in Section 13-1-2.

573 (5) If a postsecondary school maintains more than one physical campus in the state, the
574 postsecondary school shall file a separate registration form for each physical campus in the
575 state.

576 (6) (a) A certificate of postsecondary state authorization issued under this section is not
577 transferrable.

578 (b) (i) If a postsecondary school's ownership or governing body changes after the
579 postsecondary school obtains a certificate of postsecondary state authorization under this
580 section, the postsecondary school shall submit a new completed registration form in accordance
581 with Subsection (2) within 60 days after the day on which the change in ownership or
582 governing body occurs.

583 (ii) If a postsecondary school fails to timely comply with the requirements described in
584 Subsection (6)(b)(i), the postsecondary school's certificate of postsecondary state authorization
585 immediately and automatically expires.

586 (c) If there is a change in circumstance that may affect a postsecondary school's status
587 under this section, the postsecondary school shall notify the division in writing of the change
588 within 30 days after the day on which the change occurs.

589 (7) A certificate of postsecondary state authorization issued under this section expires

590 one year after the day on which the certificate of postsecondary state authorization is issued.

591 Section 15. Section **13-34a-205** is enacted to read:

592 **13-34a-205. Background checks.**

593 (1) The division may require an owner, officer, director, administrator, faculty member,
594 staff member, or other agent of a postsecondary school that applies for or holds a certificate of
595 postsecondary state authorization to:

596 (a) submit a fingerprint card in a form acceptable to the division; and

597 (b) consent to a criminal background check by:

598 (i) the Federal Bureau of Investigation;

599 (ii) the Utah Bureau of Criminal Identification; or

600 (iii) another agency of any state that performs criminal background checks.

601 (2) The postsecondary school or the postsecondary school's owner, officer, director,
602 administrator, faculty member, staff member, or other agent who is subject to the background
603 check shall pay the cost of:

604 (a) the fingerprint card described in Subsection (1)(a); and

605 (b) the criminal background check.

606 Section 16. Section **13-34a-206** is enacted to read:

607 **13-34a-206. Complaints -- Information for students and prospective students.**

608 (1) A postsecondary school shall provide each student or prospective student written
609 information regarding how to file a complaint against the postsecondary school with the
610 division, the postsecondary school's accrediting agency, and the postsecondary school's
611 approval or licensing entity.

612 (2) To satisfy the requirements described in Subsection (1), a postsecondary school
613 may place a conspicuous link on the postsecondary school's website that links to:

614 (a) the contact information of each entity described in Subsection (1); or

615 (b) a third party's website that states the contact information for each entity described
616 in Subsection (1).

617 (3) The division shall establish a process for reviewing and responding to complaints

618 that the division receives under this chapter.

619 Section 17. Section 13-34a-207 is enacted to read:

620 **13-34a-207. Discontinuance of operations.**

621 (1) If a postsecondary school ceases to operate, at least 30 days before the day on
622 which the postsecondary school ceases to operate, the postsecondary school shall give the
623 division written notice that includes:

- 624 (a) the date on which the postsecondary school will cease to operate; and
- 625 (b) for an accredited institution, a written certification, signed by the postsecondary
626 school's owner or officer, that the postsecondary school has complied with the postsecondary
627 school's accrediting agency's closure requirements.

628 (2) After a postsecondary school submits a written notice described in Subsection (1),
629 the postsecondary school may not recruit or enroll new students in the state.

630 Section 18. Section 13-34a-301 is enacted to read:

631 **Part 3. Enforcement**

632 **13-34a-301. Title.**

633 This part is known as "Enforcement."

634 Section 19. Section 13-34a-302 is enacted to read:

635 **13-34a-302. Denial, suspension, or revocation of certificate of postsecondary state**
636 **authorization.**

637 (1) In accordance with Chapter 2, Division of Consumer Protection, and Title 63G,
638 Chapter 4, Administrative Procedures Act, the division may deny, suspend, or revoke a
639 certificate of postsecondary state authorization if:

- 640 (a) for a certificate of postsecondary state authorization issued under Section
641 13-34a-203, the postsecondary school:
 - 642 (i) fails to comply with a requirement described in Section 13-34a-203;
 - 643 (ii) omits a material fact from the postsecondary school's completed registration form;
- 644 or
- 645 (iii) includes a material fact in the postsecondary school's completed registration form

646 that is incomplete, false, inaccurate, or misleading; or

647 (b) for a certificate of postsecondary state authorization issued under Section

648 [13-34a-204](#);

649 (i) the denial, suspension, or revocation is in the public interest; and

650 (ii) the postsecondary school:

651 (A) fails to meet a requirement described in Section [13-34a-204](#);

652 (B) submits a registration form or any supporting documentation that is incomplete,
653 false, inaccurate, or misleading;

654 (C) grants an educational credential to an individual that the individual did not earn;

655 (D) violates a provision of this chapter or a rule made under this chapter;

656 (E) is the subject of an order issued by a court or an administrative agency that includes
657 a finding or admission of fraud, breach of fiduciary duty, or misrepresentation, or behavior that
658 lacked moral integrity, truthfulness, or mental competence;

659 (F) has been convicted of a crime of moral turpitude;

660 (G) fails to give the division information that the division requests in connection with a
661 certificate of postsecondary state authorization; or

662 (H) fails to timely pay a fine imposed under this chapter.

663 (2) For a postsecondary school that obtains a certificate of postsecondary state
664 authorization under Section [13-34a-204](#), the division may place reasonable requirements on the
665 postsecondary school if:

666 (a) the requirement protects student interests; and

667 (b) the postsecondary school engaged in any of the behavior described in Subsection

668 (1)(b)(ii).

669 Section 20. Section **13-34a-303** is enacted to read:

670 **13-34a-303. Right to rescind.**

671 If a postsecondary school's certificate of postsecondary state authorization is revoked
672 under Subsection [13-34a-302](#)(2), a student who enrolled in the postsecondary school in reliance
673 upon the postsecondary school's possession of a valid certificate of postsecondary state

674 authorization may rescind any enrollment agreement and obtain a full refund from the
675 postsecondary school for any tuition, fees, or other charges that the student paid to the
676 postsecondary school.

677 Section 21. Section **13-34a-304** is enacted to read:

678 **13-34a-304. Violations.**

679 A postsecondary school violates this chapter if:

680 (1) the postsecondary school fails to comply with a provision of this chapter or a rule
681 made under this chapter; or

682 (2) for a postsecondary school that submits a registration form under Section
683 13-34a-204, the postsecondary school:

684 (a) intentionally omits a material fact from the postsecondary school's registration
685 form; or

686 (b) includes a material fact in the postsecondary school's registration form that the
687 postsecondary school knows or should have known is false, deceptive, inaccurate, or
688 misleading.

689 Section 22. Section **13-34a-305** is enacted to read:

690 **13-34a-305. Enforcement.**

691 (1) The division may, in accordance with Chapter 2, Division of Consumer Protection,
692 and Title 63G, Chapter 4, Administrative Procedures Act:

693 (a) investigate a postsecondary school, in response to a complaint or on the division's
694 own initiative, to verify compliance with the provisions of this chapter; or

695 (b) initiate an adjudicative proceeding to enforce compliance with the provisions of
696 this chapter.

697 (2) (a) The division may refer an alleged violation of a provision of this chapter to the
698 attorney general, a county attorney, or a district attorney.

699 (b) The attorney general, county attorney, or district attorney shall investigate the
700 alleged violation, and, following the investigation, may file a civil or criminal action in district
701 court to:

- 702 (i) enjoin the defendant from further violation of the chapter; and
- 703 (ii) impose the applicable penalties described in Section [13-34a-306](#).
- 704 (3) Nothing in this chapter prevents a postsecondary school from performing an
- 705 internal investigation.

706 Section 23. Section **13-34a-306** is enacted to read:

707 **13-34a-306. Penalties.**

708 (1) In an adjudicative proceeding under Subsection [13-34a-305\(1\)](#) or in a district court
709 action under Subsection [13-34a-305\(2\)](#), the division or the district court may impose a fine of
710 up to:

- 711 (a) \$1,000 for each violation of this chapter that is not an intentional violation; and
- 712 (b) \$5,000 for each intentional violation.

713 (2) The division shall deposit any money the division receives under Subsection (1)
714 into the Consumer Protection Education and Training Fund, created in Section [13-2-8](#).

715 (3) A violation of a provision of this chapter is a violation of Section [13-11-4](#).

716 (4) An intentional violation is a class B misdemeanor.

717 Section 24. **Repealer.**

718 This bill repeals:

719 Section **[13-34-107.5](#), Exemption certificate -- Application and renewal process.**

720 Section **[13-34-107.6](#), Confirmation of private nonprofit educational institution --**
721 **Effect of confirmation -- Fees.**